**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**
**COMPANY PETITION NO.723 OF 1992**

In the matter of the Companies Act, 1956;

And

In the matter of winding up of Stellar Electronics Co. Pvt. Ltd., a company registered under the Companies Act, 1956;

M/s.Tata Exports Limited .. Petitioners.

Shri.Abhay Khandeparkar with Aditya Khandeparkar and Mustafa Kachwala i/b.Khaitan & Jayakar for the petitioners.

Shri.Pankaj S.Shah for the respondent.

**CORAM : V.C.DAGA, J.**
**DATE : 21st February, 2007.**

**P.C.**

1. Heard the learned counsel for rival parties. Perused petition.

2. This petition is filed under Section 434 of the Companies Act, 1956 for winding up of the respondent company.

3. Factual matrix reveals that the petitioners are carrying on the business of exports and imports. The petitioners contracted to import electronic components on behalf of one Stellar Electronics Co. Pvt. Ltd. (the company)

who was the actual user. A running account was maintained by the petitioners. The company owed huge amounts to the petitioners. The cheques, which were given to the petitioners by the respondent were dishonoured with the result sum of Rs.43,58,146.38 became due and receivable from the company. The petitioners, therefore, issued a statutory notice to the respondent company on 5th August, 1992. The same was received by the respondent company. The acknowledgement is placed on record. There was no reply to the said notice. Hence, this winding up petition was filed by the petitioners against the company.

4. This Petition was admitted by an order dated 29th November, 2000. The defence raised by the respondent company, at that point of time, was that no petition could be maintained on the basis of running account.

5. A copy of the petition was served on the respondent company. There was no reply filed by the company after admission.

6. The learned counsel appearing for the respondent company chose to rely on the counter affidavit dated 29th November, 1993 filed in this

petition at the stage of admission; wherein the defences raised were as under : -

a) That the petitioners did not maintain running account of the transactions between the petitioners and the company. Assuming, they did, then winding up petition based on such accounts is not tenable.

b) That the petitioners have filed a summary suit No.34 of 1993 against one M/s.Master Builders on the basis of the identical alleged cause of action in the above company petition and praying for the recovery.

7. Heard learned counsel appearing for the parties. Learned counsel for the respondent reiterated the same submissions raised in the counter affidavit referred to hereinabove.

8. The contentions raised by the company that the petition filed by the petitioners on a running account is not maintainable is devoid of any substance. The company does not have any answer in respect of the cheques issued by them in

favour of the petitioners which were dishonoured. Had the liability of debt of the petitioner been in dispute, company would not have issued cheques in favour of the petitioner company. The liability or debt has to be presumed undisputed in absence of any explanation in this behalf.

9. The law is now well settled that the principal creditor can proceed against the principal debtor alone and separately against the surety or against both jointly to hold them jointly and severally responsible. In this view of the matter, pendency of the suit against M/s.Master Builders is of no consequence. Thus, submissions made are devoid of any substance.

10. No further defence other than referred to and dealt with is raised.

11. The learned counsel appearing for the petitioners has rightly relied upon the judgement of the Apex Court in the case of **M/s.Madhusudan Gordhandas & Co. v/s. Madhu Woolen Industries Private Ltd., AIR 1971 SC 2600**, wherein it has been held that even though the claim is not quantified, the company can be directed to be wound up; as the Court has to only ascertain;

whether the defence of the company is in good faith and whether the defence is likely to succeed on any point of law and whether the company adduces prima-facie proof of the facts on which the defence is based.

12. In the present case, neither of the three conditions have been fulfilled by the company nor there is any explanation given regarding dishonour of cheques. The debt in question, in my opinion, is undisputed. Hence, this petition must succeed.

13. In the result, this company petition is made absolute in terms of prayer clause (a) with cost quantified in the sum of Rs.5,000/-.

**(V.C.DAGA, J.)**